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From Seats of Learning to Globally Distributed Virtual Learning

Peter W. Martin
Cornell Legal Information Institute

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Abstract

> 'Thirty years from now the big university campuses will be relics. Universities won't survive. It's as large a change as when we first got the printed book', Peter Drucker, Forbes, March 10, 1997.
>
> 'A dismal new era of higher education has dawned. In future years we will look upon the wired remains of our once great democratic higher education system and wonder how we let it happen', David Noble, Digital Diploma Mills: The Automation of Higher Education (2002).

Having done digital course materials from our earliest days by 1995 Tom Bruce and I had added a full on-line law course to the LII's product mix. In the years since, as we have continued, elaborated, and expanded our distance learning ventures, there have been countless proclamations that revolutionary, transforming, cataclysmic change was underway. Before long, higher education would be unrecognizable. Although we were prompted more by curiosity and conviction that revolutionary fervor, we kept waiting for the whoosh, the applause, the jostling company, the seers foretold. And so far, at least in the realm in which we operate, they haven't materialized. Incremental change – yes; radical transformation – no.

That discrepancy is the subject of these reflections. They have less to do with technology and learning than with the institutional factors that affect the pace and place of change in systems as complex as those that provide and control higher education.

Keywords: Distance Learning, CAL, Globalisation, Law Schools

1. A Parochial Version of an Old Story

I begin with a parochial version of an old and, I would guess, near universal story – one that bears directly on my thesis that change will come slow – at least as to legal education, at least in the United States.

During the past year, the committee of the American Bar Association, charged with recommending changes in law school accreditation standards has been pondering the subject of today's sessions.

I should explain for those of you not familiar with the regulation of professional legal education in the US that even though admission to the practice of law is a matter of state control, nearly all states (thankfully not all) include as a threshold requirement – that the individual seeking admission have graduated from an American Bar Association accredited institution. Thus it is that this membership organization consisting of but a small fraction of the country's lawyers promulgates and enforces standards that prescribe the length and content of the educational program, as well as the methods of instruction at most American law schools. No matter where a law school is located in the US if it wants its graduates to be employable in New York,

Illinois, Texas and so on, it must comply. And while the association as a whole formally enacts the standards, the section of the bar association that drafts and enforces them has long been dominated by the very interests it regulates – namely the faculty and deans of US law schools.

In 1997, frightened by the specter of on-line legal education, the administrator of the association's accreditation process issued a set of 'Temporary Guidelines on Distance Education'. The guidelines set up a confusingly restrictive clearance process for virtual courses. Five years later, persuaded that these temporary provisions were no longer supportable, the standards review committee (a body possessing no experience with on-line learning) floated a proposed set of changes. The draft pleased no one and during the past six months those of us eager to reduce or remove the barriers restraining this form of teaching have pressed for revision. Less than a month ago, the ABA's Council on Legal Education and Admissions to the Bar settled on the terms that (subject to ratification by the full ABA legislative body in August) will govern virtual learning in ABA accredited schools for some time. The outcome: no on-line courses in the first year of law study and no more than one 3-credit course each term thereafter.

Why confine virtual learning within such tight limits? One former ABA administrator, now a law school dean, explained:

> Total or even substantial dependence on distance education can have a serious negative effect on law students by limiting the socialization and developmental process. … [Accreditation rules] must … ensure that students are brought together for the greater portion of their educational experience. Only in this way can the interactive and developmental aspects of legal education be continued …. Arthur R. Gaudio, Two Views: Distance Education, Syllabus, May 2002, at 1, 17.

The true animating factors, I shall suggest, lie elsewhere. For now I'll merely observe that if fully or even substantially on-line law degree programs were to qualify for ABA accreditation, the dean's institution would be a near certain casualty.

Ironically, by the time the ABA House of Delegates meets this August to determine whether or not the new standards should take effect, the first graduates of America's only on-line law school, Concord, will have received their diplomas (more on Concord, shortly).

I characterized this as a parochial version of an **old** story. In the US for sure, and elsewhere I strongly suspect, radical changes in the delivery of higher education generally as well as legal education specifically have met organized resistance by those with a stake in the status quo. And invariably the resistance has been justified in terms of concerns about educational quality.

Three times, at least, in the last century, US federal legislation dramatically changed the terms of access to the country's colleges and universities. First came the GI bill, then Pell grants and finally student loan programs subsidizing higher education for

many Americans who could not otherwise have pursued a four-year post secondary course of study.
Each of these national initiatives was greeted with resistance, if not opposition, by the educational establishment.

About the GI bill, the response was 'we haven't the capacity;' Pell grants, 'we'll be engulfed by waves of unqualified students', federal student loans, 'the administrative burdens will be impossible'. The same dynamic is evident today with no strong national policy propelling change beyond the indirect force resulting from the channeling of federal subsidy of higher education through its consumers and the evident educational gains held out by digital technology.

2. Enter Technology

With this group, those gains need little elaboration; but before proceeding, it may be useful to disaggregate the more salient ones. I have listed some here:

- Greater access to existing programs
- New audiences
- Expanded human and information resources
- Greater curricular flexibility for students
- Better learning outcomes
- Reduced cost

They understate the case. These are, importantly, technologies that pay scant attention to distance, technologies that can penetrate geographical, political, and institutional boundaries that previously seemed utterly defining. They might lead US colleges and universities to a radical change in how they conceive of their student bodies, faculties, and research possibilities. They might, for example, come to view academics and professionals situated anywhere on the globe as potential presenters, commentators, and mentors for students. For their part, students might come to view individual courses or programs offered by widely scattered institutions as accessible components of their education, without any thought of having to move from place to place. Significantly, all of this could occur across national boundaries.

In basic cost terms the pressures for harnessing digital technology to deliver education seem huge. The overhead generated by the physical environment of higher education – the library facilities, classrooms, and student spaces of all kinds along with the staff involved in their operation – constitute a major part of the explicit cost of university-based education. And those responsible for higher education, including leaders in legal education, speak in dire tones about the increases in tuition over the past decade. Adding significant on-line components to an institution's curricular mix could dramatically alter the cost picture for both that school and its student clientele.

The time and place requirements that limit the formal education process to students who are resident during a term and to groups of students able to assemble in scheduled

meetings (not conflicting with other course sessions) impose additional implicit costs on those students who are able to enroll. They also effectively exclude others from the educational process. Less costly and more flexibly scheduled education has the potential for being far more inclusive.
The segmented educational program most educators take for granted, one chunked in courses of standard length and pedagogy, is in no small part a consequence of rather than the reason why we march students through our degree programs in measured time, to a near military beat.

An on-line learning experience can produce better education outcomes by allowing individual control over pace and repetition, more flexibility of other kinds (responding to different styles of learning, capacities, and interests), closer monitoring, and more learning through application and problem-solving.

Students can be offered instruction where they are. Their faculty or instructional team can itself be spatially distributed and include relevant practicing professionals in addition to 'resident' full-time academics. Vast information resources can be integrated within such learning units (virtual libraries for virtual courses). All of this should permit students (and employers) to mix professional employment and education in ways not previously possible.
It is evident benefits like these that produced predictions of the rapid demise of universities as we have known them. But those predictions underestimated the countervailing forces – the sources and means of resistance. While most take less tangible form than a vote of the American Bar Association they bear as powerfully on the shape and pace of the spread of virtual learning as do the gains it promises to deliver.

3. Some Major Inhibitors

Here are some of the major inhibitors I see.

A. The role of the professional matrix in which individual academics make decisions about what to do, for whom, and when.

In a 1985 Journal of Legal Education article, Professor Geoffrey Hazard, then of the Yale Law School wrote:

> 'in curriculum reform the faculty … [are] not so much the solution as the problem'.

From that sound bite, I tease out two distinct, through related, points. First, Hazard can be understood as referring to the decisions that individual faculty members make as they allocate their own effort, creative energy, and time. Education of matriculated students constitutes but a fraction of the duties of a full-time academic in an American university or law school. Of at least equal importance especially during the formative period of his or her career is the expectation of original research and scholarship. To the individual faculty member, particularly one not yet tenured or tenured but dreaming of recruitment by another more prestigious institution, a change of teaching assignment or mode of instruction that entails additional effort of uncertain, but significant dimension, carries a serious price – reduced time for research and writing. Since incremental quality and quantity of scholarship counts toward career

advancement while innovative teaching does not the tension resolves easily. With scarcely an exception the first question I get from colleagues about my on-line courses is whether they don't require a lot more work to mount than conventional classroom teaching. The honest answer is 'at the front end, yes.' Typically that ends further serious interest.

B. The pattern of institutional governance

In speaking of faculties Hazard also could be understood as making a point about decisions made by the collectivity – the way, given a governance structure that places important programmatic decisions (or at least effective veto power) in the faculty, that faculties operating through committees, representative bodies, and assemblies of the whole are able to block change.

A former president of the University of Michigan recently observed:

> Many university presidents – particularly those associated with public universities – believe that the greatest barrier to change in their institutions lies in the manner in which their institutions are governed, both from within and from without. Universities have a style of governance that is more adept at protecting the past than preparing for the future. The complex web of governance, from lay boards to complex relationships with state and federal governments to 'shared governance' between the administration and the faculty, is awkward at best and certainly not conducive to decisive action, James J. Duderstadt, A University for the 21st Century 66 (2000).

Those of you who know Ron Staudt have, in all likelihood, heard him discuss the plan he developed for an 'executive JD' program to be offered by Chicago-Kent. Designed along the lines of many MBA programs that permit full-time professionals to pursue part-time study without ceasing work or changing residence, this program would have combined short periods of intense on-site work (sufficient to meet the ABA accreditation requirements) with on-line instruction. Geographic location and institutional reputation along with 'first mover' advantage would have given this program a powerful competitive edge over existing alternatives. The business plan was compelling and strongly backed by the university. But in the end (fall 2000), it was voted down by the Chicago-Kent faculty. A substantial majority simply did not want to undertake so radically different a pattern of teaching. Today, the model sits in public view, awaiting a faculty prepared to vote 'yes'.

C. Legacy skills and mindset

Another significant barrier reinforces the first two. It is built of habit, experience, limited institutional and individual competence. To begin, legacy skills and legacy mindset are not easily set aside. Few experienced classroom teachers are eager to become beginners again.

But the attraction of traditional modes of residential instruction goes beyond their familiarity. For faculty members the classroom is:

- a place of performance (and who would teach if she or he didn't find some satisfaction in performing?)
- a zone of control

- a source of reassurance (The students' presence, apparent attention, and engagement encourage the belief that one's teaching efforts count for something.)

Furthermore, in an indirect but nonetheless powerful way the classroom supports the scholarly agenda, for it isolates and walls off the teaching function.
Finally, in many disciplines, law being among them, classroom teaching offers a high degree of autonomy. By contrast effect use of digital technology to create and conduct courses necessitates collaborative working relationships among domain experts teaching in the same field plus technology specialists and experts on course design and learning. The culture and status arrangements of most institutions of higher education make such joint work very difficult to initiate and sustain.

D. Concerns about brand

To a majority of students making decisions about where to study, the strength of the brand name is more important than programmatic details. The annual ratings by US News and World Report exert a powerful influence over the application flows in nearly all fields.

An institution with a strong brand attached to expensive, residential programs and degrees, will not willingly allow it to be diluted. That is why Harvard Law School reacted so forcefully to Arthur Miller's involvement with the on-line Concord Law School. That is why on-line offerings of Harvard Law School's Berkman Center must be called programs, not courses. That is one of the reasons the LII's on-line courses for students at other law schools receive credit from the receiving institution and not Cornell. Under Cornell University regulations academic credits bearing its name must carry a premium brand price (currently $ 720 per credit and thus $2,160 for a 3-credit course). It was brand concerns that led the consortium members that established UNext (Columbia, Stanford, and the London School of Economics) to offer its courses under the freshly minted name of Cardean University rather than their own.

The power of this factor, of course, varies according to the strength of the brand. It is at its peak with highly selective institutions able to charge top tuition and fees. For other components of the higher education market or legal education market in the US it might appear to be far less of a factor. Yet schools with a dominant position in their region (the top school in a state, say) or even a single urban setting (e.g., the top school in Cleveland) are likely to hesitate before offering the same degree earned through their residential program to on-line students on very different terms. Dependence on alumni good will and financial support tend to strengthen this reluctance.

Brand concerns need not be a total inhibitor. So long as a new program supporting virtual learning extends or adds luster to a school's existing academic 'product line' without competing with it, positive effects are possible. The MIT OpenCourseWare initiative is a brilliant example. Announced with great fanfare in April 2001, the program aims to make the materials from MIT courses freely available for non-commercial educational use around the globe – available for adoption and even adaptation by academics in the most thinly resourced countries and for use by individual learners anywhere and everywhere. The increment separating course

materials from the full course experience that we might call instruction will not be distributed. MIT course credits and degrees are definitely not going on-line.

E. Accreditation and regulation

> While there is competition among institutions for students, faculty, and resources – at least in the United States – the extent to which institutions control the awarding of degrees has led to a tightly controlled competitive market. … Traditional colleges and universities enjoy competitive advantages based upon long-standing reputation [brand] and control of accreditation and credentialing, James J. Duderstadt, A University for the 21st Century 294 (2000)

While the degree of regulatory control (and capture) in US legal education may represent an extreme, all degree-granting programs in America are subject to regulatory and accreditation control. Even virtual programs must be sited somewhere. An on-line degree program with even modest physical presence in New York needs to satisfy state education officials; and for it to be marketable it must also be accredited. One of the reasons cited for the closure this past month of the United States Open University, branch of the hugely successful Open University of the UK, was the school's failure to secure regional accreditation rapidly enough. Without it the highly respected program could not draw sufficient students, accreditation being a precondition for federal student aid and also for the educational reimbursement programs of most employers.

4. The Big Questions – Not Whether, but Who? Where? and When?

Notwithstanding the strong forces and pressure points of resistance the compelling benefits of a substantial shift to on-line learning and the success of several early practitioners make the question less whether but: Who? How? When?

A sampler of quite different higher education (legal education) models made possible by computer-mediated instruction, research, communication

Here are some forms of change I see as likely with some guesses about the probable lead players.

4.1 The On-line (or mostly on-line) Degree Program (Law School)

One needn't speculate about the characteristics or auspices of the first virtual law school in the US. Operating outside the ABA-enforced cartel is one law school I have already mentioned – the Concord University School of Law, subsidiary of Kaplan, Inc., owned by Washington Post. Concord is the first law school, based in the US, with a URL
< http://www.concord.kaplan.edu/ > but no campus. It offers a four-year JD program delivered via the Internet that qualifies its graduates to sit for the California Bar Exam (California being the magnificent exception to the dominant ABA accreditation pattern I described earlier). In the 4 years since it opened its virtual doors Concord's on-line student population has risen from 30 to over 1,000.

Concord offers a challenging answer to the question 'how can a student finance a US legal education?' Its total tuition and fees for a four-year JD program are currently around $28,000, less than Cornell charges for a single year. (And this is a JD program that can be undertaken alongside employment, with zero relocation or commutation expense.)
The staffing for Concord's program looks quite different from that of the typical ABA-accredited institution. Sustainable, cost-effective on-line education involves the conversion of a significant fraction of classroom teacher activity into reusable multimedia content. Creating and subsequently revising (as distinguished from recreating) that educational commodity requires a team rather than an individual teacher and skills few academics possess. To complete the full course package requires diverse forms of student monitoring, guidance, exchange, and evaluation. It is through disaggregating a law school course into a pre-packaged, reusable commodity combined with an interactive service component, separating out a number of discrete teaching functions, that on-line instruction can both keep costs (and tuition) down and offer attractive faculty-student ratios with unusual levels of student evaluation and feedback. This is the Concord model.

Concord is but part of a larger corporate business plan. Last August SMART BUSINESS magazine named Kaplan, Inc. <http://www.kaplan.com>, one of the top 50 US companies in terms of success at using the Internet to expand and enhance their business.

While Kaplan's on-line presence and growth are impressive they do not put it at the top of the class. That honor goes to the University of Phoenix, the largest private institution of higher learning in the United States, a subsidiary of the Apollo Group. The University of Phoenix online unit reported income up 82 percent, to $32 million, in the fiscal year that ended last August. The university has seen use of its online education increase 80 percent in the past year. Currently it reports 37,600 online students. Apollo's online revenues grew from $28.6 million in 1997 to $185.5 million in 2001.

A blatant feature that Concord and Phoenix share is that they are for-profit organizations focused tightly (some would say 'narrowly') on education. Unlike the typical non-profit institution their faculties are not expected to do research, produce scholarship, or plan and oversee the curriculum. They do not have tenure but are employed at will, and they are quite simply employed to teach. In Higher Ed, Inc.: The Rise of the For-Profit University (The Johns Hopkins University Press 2001), Richard Ruch observes:

> By doing without expensive student residence halls, stadiums, faculty dining rooms, sports teams, and president's houses, and by minimizing faculty … time for nonteaching activities, the for-profits are able to keep the cost of educating a student at the same level as the price of tuition, or very close to it. Id. at 87.

The evidence is strong, I think, that in the US leadership in on-line degree programs, especially those that exploit the potential of the technology to extend access and reduce costs will come from this sector, from the likes of Concord and Phoenix – a players that remain beneath the notice of most of my colleagues.

A recent piece in the New York Times entitled 'Lessons Learned at Dot-Com U' recounts the numerous casualties and shriveled dreams among the on-line startups launched during the late nineties by established US public and non-profit institutions – Fathom, NYUonline, Virtual Temple and others. Only at very end of the article is there a short paragraph noting an exception to this pattern of failure: Phoenix.

4.2 The Integration of Academic Study and Apprenticeship or Other Forms of Experiential Learning

Under current ABA accreditation rules students can obtain up to a semester's worth of academic credit for relevant, supervised and coordinated professional work. Beyond this academically recognized work experience large numbers of students engage in legal work between terms and even during school sessions. Many urban institutions offer four-year part-time JD programs that explicitly contemplate contemporaneous full-time employment by participants. Under these circumstances, virtual seminars and tutorials represent an obvious way to add educational value to the collective work experience of groups of students at modest expense. Many schools, including my own, are assembling their distant working students into sustained on-line exchange with one another and one or more supervising faculty members. More generally for students who retain a base with a residential institution but leave it for episodes of study abroad, internships in government, industry, or the non-profit sector, this technology provides an attractive means of integration. This is incremental change of the sort that comes more easily.

More ambitious forms of integration are likely to be anchored in the educational needs and programs of particular employers. Employee development programs have grown at an enormous rate in the US within technology, manufacturing and even law firms.

4.3 Established Institutions as Delivery Points and Degree Issuers

Increasing numbers of US students travel from campus to campus in the course of completing the basic undergraduate degree – beginning at community college and moving on to comprehensive university, transferring from one institution to another, studying outside the country, and in the present century finding and pursuing courses on-line.

The principal limit on this buffet approach to higher education is the need for there to be some institution with both willingness and authority to recognize and award a degree for the student's cumulative course of study. Within constraints of state regulation and accreditation standards and for a price, more and more institutions are filling that need.

There are institutions like the State University of New York's Empire College which allow students to begin with 'credit for prior college-level learning' gained from diverse sources and will fashion individually tailored degree programs on top of them.

More importantly, students pursuing credentials from more prestigious institutions have grown remarkably clever at finding find and pursuing cost-effective paths to whatever combinations of learning and credit meet their personal tastes and needs. In unknown quantities on-line courses have entered the mix. The certification of

undergraduate course credit at Cornell University is so widely distributed, under-regulated and poorly monitored that no one knows how many credits toward Cornell degrees are today being acquired by transfer from on-line courses offered by other institutions.

There is another even more surreptitious way students can and will get academic credit for on-line learning. Law students in the US pay incalculable sums for commercially produced study aids – learning materials and more that hold out the prospect of a less painful path to satisfactory performance in those settings where students are evaluated, principally final exams. It takes little imagination to foresee 'globally distributed virtual learning' in the form of course supplements sold directly to students.

A less alarming variant sees virtual courseware components being developed and disseminated to established colleges and universities to be deployed throughout the curriculum, but with local superintendence, interaction, and credentialing. MIT's courseware initiative would be an example. CALI can be viewed as pointing toward this future. And who knows what we may see from the commercial publishers.

5. Shifting to a Very Different Setting – Developing and Least Developed Countries

So far these reflections have focused on higher education in the US and by assumed extrapolation other developed countries. In developing countries, the alluring potential of computer-mediated education is greater by far, the impediments, no less substantial.

A. Greater educational need, thinner resources

Let me remind you of the order of magnitude of the challenge confronting the higher education sector in the majority of the nations of the world. UNESCO reports that the percentage of young people attending any form of post-secondary education is only 3 percent in sub-Saharan Africa and 7 percent in Asia, compared to 58 percent in developed countries generally, 81 percent in the US.

A World Bank project report on one developing nation makes the following points:

> - First, improvement of higher education is critically important to ensuring adequate and balanced economic and social development and competitiveness of the country's labor force in the globalizing economy;
>
> - Because of population growth and improvements in secondary education, the number of students entering higher education has, in recent years, grown at a breathtaking rate. As a consequence spending per student has declined dramatically. 'This means,' the report observes, 'that significant efficiencies will need to be introduced into the system just to maintain quality at its current inadequate level';
>
> - The large and complicated mosaic of institutions of higher education is 'severely compromised by overly centralized control of the system and pervasive and widespread inefficiencies.' 'A rigid and outdated legislative

> framework governs the system, a moribund civil service code regulates staffing and promotion policies, public sector control over mundane operational details raises costs, …' and so on;
>
> - Individual institutions have little latitude to shift resources and appropriations do not reflect institutional needs;
>
> - Faculty absenteeism rates are very high 'probably because most hold multiple jobs';
>
> - Student dropout rates are high;
>
> - 'While universities in highly competitive economies are training students to think creatively, solve problems, work collaboratively, and adapt quickly to new technologies and new work environments, universities [in this country] stress rote learning and memorization of facts'. '[A] survey revealed that the typical undergraduate checks out just one university library book per year'.

And in conclusion, the proportion of students and even faculty with meaningful access to information technology 'is extremely low'.

Against such a background, the theoretical attractions of digitally supported learning programs are powerful, the practical challenges of implementation, daunting. A joint study by UNESCO and the World Bank looking at existing distance education programs in the third world found their cost of education per student to be approximately one-third that of instruction at conventional institutions in the same country. And the methods of those programs, some of them quite large, have, to date, obtained little leverage from digital technology.

B. Quite different patterns of technology penetration (traveling the last kilometers)

The most obvious difficulty in bringing digital technology to bear on distance learning in such settings is what the World Bank report I've quoted from terms limited student and faculty 'access to IT' – both computer and network infrastructure within the institution and personal access apart from it. The third world situation is far removed from the ubiquitous computing and Internet access which is at least the assumed reality in most if not all of the developed world – with students and faculty able to access course content and communicate about it not only in computer labs on campus but where they live.

Recent work on a distance learning project in Indonesia reminded me of the important truth that different conditions can and often do give rise to quite different solutions. There, where university funding and governance structures, make university investment in computer labs and connectivity a distant ambition, a commercial firm (M-Web) is building computing centers with net access on or next to major universities. User fees rather than university revenues will support their operation.

In national settings with minimal connectivity and low levels of Internet penetration, academic facilities, including distance education study centers, represent attractive targets for entrepreneurial technology ventures. Academic institutions can also be

platforms. Zambia's leading Internet Service Provider and portal (Zamnet) was created as a for-profit subsidiary of the University of Zambia as a way of securing adequate bandwidth and expertise for its campus.

However, even with such creative moves bringing the Net and computers to one or several universities, print, audio tape, CDs, radio or TV broadcast rather than individual student computers must continue to be the means of moving course content the last kilometers in those broad reaches of the developing world that lack effective distribution of power and telecommunications.

In these and less limited third world settings students will assemble at distributed meeting points rather than access course content in the workplace or at home. They will need local intermediaries (tutors) and training. In short, first world recipes will require substantial adjustment, but in such settings, as in technology rich ones, the principal challenges confronting new forms of distributed learning are posed by institutional culture and structures, faculty incentives (or their lack), and the requirements and expectations that operate on students.

C. The same institutional issues

Roughly a month ago I met with a group of Indonesian professors and lecturers. My role was to provide them with an introduction to and then hands on training in the use of the on-line course environment that will support three pilot distance law courses these Indonesian colleagues plan to offer this fall. The bulk of the workshop was devoted to issues of course scope and the many possibilities of the new technology. But in the final session a series of critical administrative questions bubbled up. Here are some of them.

When a course originating with one or more faculty members at institution A is offered to students matriculated at institution B:

a) How are potential enrollees to know of the course?

b) How will they register for the course?

c) To what extent will the receiving institution or its subunits control access to the course?

d) To what extent will the course count toward the degree requirements and academic record at the receiving institution for those students enrolling?

e) Who will pay for the course and to whom?

f) How will the student exams and other graded and credited activities be monitored to assure that students don't obtain course credit through the assistance of others, and whose academic standards will apply?

g) Finally, do Ministry of Education policies impose any constraints?

Every one of these questions was an old acquaintance – for we (the LII) have been forced to address them all in connection with our courses. But our answers to them, shaped by the regulatory, governance, and fiscal structures of US higher education are of little use in the Indonesian setting. Whatever uncertainties hover over the technology infrastructure and course plans for these three Indonesian distance law courses, the administrative ones pose far greater challenge – thinking only of the first year. And no one I spoke with had yet thought through to the inevitable follow-up questions – who will have the rights, who will have the resources and incentive to sustain, update and improve the courses thereafter.

6. Some Concluding Observation about Motivation

In the face of the evident institutional obstacles and sources of resistance, what forces will drive this change. Several motives have the necessary force.

The first is need. Not in the US nor in Europe but in national settings where tertiary education is attained by only 3 or 5 or 7 percent of the young, the use of distributed digital technology in varying combinations with site-based distance learning centers seems certain to occur. Indeed, it has begun. The potential gains are so palpable, the price of doing nothing so stark that some countries in this situation are bound to show the rest how. Some are already doing so.

Where higher education is consumed by over half the relevant population, the situation in the US and other industrialized nations, the need to expand or to provide more equal access has far less force. Reducing the cost of higher education without serious compromise of quality has general political appeal and will probably induce distance learning innovation in a number of US states. When one comes to the field of law, however, neither the legal profession nor the public respond favorably to the natural consequence of a significant reduction in the cost of a JD – namely, an increased supply of lawyers. The state most likely to join California soon in recognizing on-line legal education is Alaska, for its population dispersal predisposes the state to on-line education, lawyers are few, and there is no law school situated in the state.

Two other institutional motivators have the force to shape the near-term future. The first is greed, and for two or three years all manner of universities responded to its pull. Believing that content was everything, that porting classroom-based instruction to the Net was a straightforward application of technology, and that lots of money lay on the table for the first movers to appropriate, a good number of US universities partnered or otherwise invested in separate entities in order to stake their claim. That vision of a ‘pot of gold’ at the end of the distance learning rainbow has dissipated but not all the ventures it prompted have been closed out. Some may mature into interesting models.

Finally there is fear. Patently, deep fear animates some of the resistance. Failure is not simply a rhetorical term in US higher education. While relatively few students fail colleges are increasingly being forced out of business. According to the Chronicle of Higher Education 34 private colleges and universities folded between 1995 and 2002 (NY Times, May 7, 2002, at A 28). Were a law school like Concord to be accepted as preparation for the practice of law in more states than California, those local law

schools that dot the major population centers of the US and draw the bulk of their students from commuting range could well face extinction. With little or no brand strength and tuition roughly three times as high, they would have to persuade their niche markets of an improbable value/cost proposition. So long as they can block that future through the American Bar Association, they will.

But fear can also drive innovation. The ABA-accredited law school that has made the greatest commitment to on-line learning is a private law school with a weak market position in a state (Florida) into which two new publicly funded schools have been authorized by the legislature. Where survival is the issue faculties will vote for and implement change.

Until American institutions like my own are confronted with a palpable need or threat, or greed rises again, their involvement in virtual learning will be limited to experiments like our own and non-credit bearing forms that do not compete with their core programs. Recognizing that, I look to learn from those of you whose institutions are less constrained or more powerfully motivated what sort of revolution implementation of widely distributed virtual learning at convincing scale will bring.